

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4243 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAUSHIKSINH @ BABLY MITHUBHAI JADEJA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.SJ DAVE, A.G.P. for Respondents No.1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 14/07/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 2nd April, 1997 rendered by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), for short "the PASA Act".

2. The grounds on which the impugned order of detention passed appear at Annexure : B to the petition. They inter alia indicate that the petitioner has been indulging in criminal and anti-social activities of threatening and assaulting the students of Morbi college and beating them with a view to extract money and thereby creating atmosphere of fear and committing various offences under the Indian Penal Code resulting in fear in the mind of people. The detaining authority has placed reliance on three cases of 1996 registered with Morbi City Police Station, respectively inter-alia under Sections 307, 323, 504, 506(2) I.P.C. The particulars of such offences have been set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of twelve witnesses have been relied upon. They speak about the incidents ranging from around June, 1996 to around September, 1997 indicating beating in public the concerned witnesses, creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a dangerous person within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State.

6. The petitioner has challenged the aforesaid order of detention on number of grounds, inter alia, on the ground of delay appearing in Para : 9 at Page : 7 of the petition. The same would read as under :

"The petitioner says and submits that last offence registered against him on 22.11.1996 and he was released on bail on 23.12.1996 and thereafter after 4 months order of the detention passed on 2.4.97. So there is a great delay in passing the detention order. So order is required to be set aside by this Hon'ble Court."

Although there is no Affidavit in Reply to the aforesaid ground of delay, it has been submitted on behalf of the respondents that the delay would stand

explained by the fact that the witnesses have given their statements regarding the petitioner's activity. In the context of such facts reliance has been placed on the decision of the Honourable Supreme Court in the case of P.N.Paturkar V/s. S. Rama Murti, reported in A.I.R. 1994 SC 656. There the reference has been made to an earlier decision of the Apex Court in the case of A.T.Abdul Rehman V/s. State of Kerala, reported in (1989) 4 SCC 741 : AIR 1990 SC 225. Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of five months and eight days from the date of registration of the last case and of more than four months from the submission of the proposal. The statements were obtained only after the detenu became successful in getting bail in all the cases registered against him. In so far as the present case is concerned, the facts as noted above speak for themselves. The result is that the decision in P.N.Paturkar's case (supra) would be applicable to the facts of the present case.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of decision of P.N.Paturkar (supra), it is not necessary to deal with the other grounds. Hence,

following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu Kaushiksinh @ Bablu Mithubha Jadeja shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

* * * * *

sas